

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10

11 STEVEN CAMERON,	}	Case No. CV 19-395-DSF (SP)
12 Plaintiff,		MEMORANDUM AND ORDER DISMISSING ACTION FOR FAILURE TO PROSECUTE
13 v.		
14 ALEX VILLANUEVA, et al.,		
15 Defendants.		
16 _____	}	

17  
18 I.  
19 PROCEEDINGS

20 On January 17, 2019, plaintiff Steven Cameron, proceeding pro se and in  
21 forma pauperis, filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. In the  
22 Complaint, plaintiff alleged his civil rights were violated while he was confined at  
23 the Los Angeles County Jail.

24 The Court issued its initial order in this case on January 25, 2019, in which  
25 the Court advised plaintiff that it was screening the complaint pursuant to 28  
26 U.S.C. § 1915(e)(2). The Court also advised plaintiff that “plaintiff must  
27  
28

1 immediately notify the court (and defendants or defendants' attorneys) of any  
2 change in plaintiff's address and the effective date. If plaintiff fails to keep the  
3 court informed of a correct mailing address, this case may be dismissed under  
4 Local Rule 41-6, which states as follows:

5 If mail directed by the Clerk to a *pro se* plaintiff's address of record is  
6 returned undelivered by the Postal Service, and if, within fifteen (15) days of  
7 the service date, such plaintiff fails to notify, in writing, the Court and  
8 opposing parties of his current address, the Court may dismiss the action  
9 with or without prejudice for want of prosecution."

10 On October 7, 2019, the Court found the Complaint subject to dismissal, and  
11 granted plaintiff leave to file a First Amended Complaint by November 6, 2019.  
12 Plaintiff did not file a First Amended Complaint by that date, or at all.

13 After failing to receive a First Amended Complaint or any other  
14 communication from plaintiff, on April 24, 2020, the Court issued an Order to  
15 Show Cause Why Complaint Should Not Be Dismissed for Failure to Prosecute  
16 ("OSC"). Plaintiff was ordered to respond to the OSC by May 15, 2020, and show  
17 cause why the action should not be dismissed for failure to prosecute and/or  
18 comply with a court order. The Court gave plaintiff several options for responding  
19 to the OSC, including showing cause in writing why the action should not be  
20 dismissed, filing a First Amended Complaint, filing a Notice of Dismissal of the  
21 action, or electing to stand on his Complaint. The Court cautioned plaintiff that his  
22 failure to timely respond to the OSC would be deemed by the Court as consent to  
23 the dismissal of this action without prejudice.

24 Plaintiff did not respond to the OSC by the May 15, 2020 deadline as  
25 ordered, and has not filed a First Amended Complaint. A copy of the OSC that  
26 was mailed to plaintiff at his address of record was returned to the Court as  
27

1 undeliverable on May 12, 2020. The Court has not received any response or other  
2 communication from plaintiff since January 17, 2019, when plaintiff filed the  
3 Complaint.

## 4 II.

### 5 DISCUSSION

6 The original complaint filed by plaintiff herein suffers from the pleading  
7 deficiencies discussed in the Court's October 7, 2019 order finding the Complaint  
8 subject to dismissal. The Court granted plaintiff leave to amend, but plaintiff has  
9 ceased complying with or responding to court orders. Plaintiff has failed to file a  
10 First Amended Complaint remedying the original Complaint's deficiencies.  
11 Plaintiff also has failed to keep the Court informed of his current address, despite  
12 being directed to do so in the initial order sent to plaintiff just after he filed his  
13 Complaint, so that the Court has no way to contact plaintiff. Further, plaintiff  
14 failed to respond to the OSC by the deadline to do so, perhaps not surprisingly  
15 since the OSC was returned as undeliverable. Plaintiff's failure to file a First  
16 Amended Complaint, failure to respond to the Court's OSC, and failure to keep the  
17 Court informed of a correct mailing address evidences a lack of prosecution on his  
18 part.

19 It is well established that a district court has authority to dismiss a party's  
20 action because of his or her failure to prosecute or to comply with court orders.  
21 *See* Fed. R. Civ. P. 41(b); *Link v. Wabash R.R. Co.*, 370 U.S. 626, 629-30, 82 S. Ct.  
22 1386, 8 L. Ed. 2d 734 (1962) (a court's authority to dismiss for lack of prosecution  
23 is necessary to prevent undue delays in the disposition of pending cases and to  
24 avoid congestion in the calendars of the district courts); *Pagtalunan v. Galaza*, 291  
25 F.3d 639, 642 (9th Cir. 2002) (weighing factors); *Ferdik v. Bonzelet*, 963 F.2d  
26 1258, 1260 (9th Cir. 1992) (a district court may dismiss an action for failure to  
27

1 comply with any order of the court).

2 In *Carey v. King*, 856 F.2d 1439, 1441 (9th Cir. 1988), the Ninth Circuit  
3 affirmed the district court's dismissal of a case for failure to prosecute. The Ninth  
4 Circuit cited the following factors as relevant to the district court's determination  
5 of whether dismissal of a pro se party's action for failure to prosecute is warranted:  
6 ““(1) the public's interest in expeditious resolution of litigation; (2) the court's  
7 need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public  
8 policy favoring disposition of cases on their merits and (5) the availability of less  
9 drastic sanctions.”” *Id.* at 1440 (quoting *Henderson v. Duncan*, 779 F.2d 1421,  
10 1423 (9th Cir. 1986)).

11 In this case, plaintiff has failed to file a First Amended Complaint as  
12 directed, failed to respond to the Court's April 24, 2020 OSC, and has not kept the  
13 Court informed of a correct mailing address. Plaintiff's failure to follow the  
14 Court's orders and to prosecute his case has caused this action to languish,  
15 impermissibly allowing plaintiff to control the pace of the docket rather than the  
16 Court. *See Pagtalunan*, 291 F.3d at 642 (“It is incumbent upon the Court to  
17 manage its docket without being subject to routine noncompliance of litigants.”).  
18 Plaintiff's conduct indicates that he does not intend to litigate this action diligently,  
19 or at all. Thus, the first and second factors weigh in favor of dismissal. *See*  
20 *Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999) (“[T]he public's  
21 interest in expeditious resolution of litigation always favors dismissal.”).

22 A rebuttable presumption of prejudice to an opposing party arises when a  
23 party unreasonably delays prosecution of an action. *See In re Eisen*, 31 F.3d 1447,  
24 1452-53 (9th Cir. 1994). Nothing suggests that such a presumption is unwarranted  
25 here. Where a party offers a poor excuse for failing to comply with a court's order,  
26 the prejudice to the opposing parties is sufficient to favor dismissal. *See Yourish*,

1 191 F.3d at 991-92. Here, plaintiff has not offered any excuse for his failure to  
2 comply with the Court's orders. Further, "[u]nnecessary delay inherently increases  
3 the risk that witnesses' memories will fade and evidence will become stale."  
4 *Pagtalunan*, 291 F.3d at 643 (citing *Sibron v. New York*, 392 U.S. 40, 57, 88 S. Ct.  
5 1889, 20 L. Ed. 2d 917 (1968)). Thus, the third factor also weighs in favor of  
6 dismissal.

7 It is a plaintiff's responsibility to move a case toward a disposition at a  
8 reasonable pace and to avoid dilatory and evasive tactics. *See Morris v. Morgan*  
9 *Stanley & Co.*, 942 F.2d 648, 652 (9th Cir. 1991). By failing to file a First  
10 Amended Complaint, failing to respond to the Court's April 24, 2020 OSC, and  
11 failing to keep the Court informed of a current mailing address, plaintiff has not  
12 discharged this responsibility. In these circumstances, the public policy favoring  
13 resolution of disputes on the merits does not outweigh plaintiff's failure to comply  
14 with court orders or move the case forward.

15 The fifth factor, the availability of less drastic sanctions, ordinarily counsels  
16 against dismissal. "Alternative sanctions include: a warning, a formal reprimand,  
17 placing the case at the bottom of the calendar, a fine, the imposition of costs or  
18 attorney fees, the temporary suspension of the culpable counsel from practice  
19 before the court, . . . dismissal of the suit unless new counsel is secured [,]  
20 . . . preclusion of claims or defenses, or the imposition of fees and costs upon  
21 plaintiff's counsel. . . ." *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 132 n.1 (9th  
22 Cir. 1987) (citation and internal quotation marks omitted). In the instant case,  
23 however, each of these possibilities is either inappropriate for a pro se litigant  
24 proceeding in forma pauperis or has already been employed with no apparent  
25 effect.

26 The Court attempted to avoid dismissal by: (1) advising plaintiff in its initial  
27  
28

1 order that if plaintiff fails to keep the court informed of a correct mailing address,  
2 this case may be dismissed; (2) cautioning plaintiff in its October 7, 2019 dismissal  
3 order that failure to timely file a First Amended Complaint may result in a  
4 recommendation of dismissal; (3) after plaintiff's deadline to file a First Amended  
5 Complaint passed, waiting five months before issuing an OSC in which the Court  
6 warned plaintiff that failure to timely respond to the OSC would be deemed by the  
7 Court as consent to dismissal of the action without prejudice; (4) in that OSC,  
8 giving plaintiff several options for how he could proceed, including filing a First  
9 Amended Complaint, giving notice he was standing on the Complaint, or  
10 dismissing the Complaint; and (5) waiting more than a month beyond the deadline  
11 to respond to the OSC before issuing this order. Plaintiff has not communicated  
12 with the Court in any fashion since January 17, 2019. Further, dismissal without  
13 prejudice is less drastic than dismissal with prejudice. As there appears to be no  
14 less drastic sanction than dismissal without prejudice now available, the fifth factor  
15 weighs in favor of dismissal.

16 Based on the foregoing, dismissal of this action without prejudice is  
17 warranted for failure to prosecute and to obey court orders.

18 **III.**

19 **ORDER**

20 IT IS THEREFORE ORDERED that Judgment shall be entered dismissing  
21 this action without prejudice.

22  
23 DATED: June 26, 2020

24 

25 HONORABLE DALE S. FISCHER  
26 UNITED STATES DISTRICT JUDGE  
27  
28

1 Presented by:

2 

3 \_\_\_\_\_  
4 SHERI PYM  
5 UNITED STATES MAGISTRATE JUDGE  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28